

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

| | | |
|---------------------------------------|---|--------------------|
| OLIVER MITCHELL |) | |
| Claimant |) | |
| |) | |
| VS. |) | |
| |) | |
| BOEING COMPANY |) | |
| Respondent |) | Docket No. 268,298 |
| |) | |
| AND |) | |
| |) | |
| INS. CO. STATE OF PENNSYLVANIA |) | |
| Insurance Carrier |) | |

ORDER

Respondent requests review of a preliminary Order entered by Administrative Law Judge Nelsonna Potts Barnes on October 2, 2001.

ISSUES

The Administrative Law Judge determined claimant's work environment aggravated or accelerated claimant's obstructive rhinitis and accordingly ordered respondent to refer claimant to an ear, nose and throat surgeon for treatment.

The respondent contends the Administrative Law Judge exceeded her jurisdiction in ordering respondent to refer claimant to an ear, nose and throat surgeon for turbinate reduction surgery when the underlying condition was not caused, aggravated or accelerated by claimant's employment. Stated another way, respondent contends the recommended surgery is to correct a congenital condition not caused by work.

The claimant did not file a brief with the Board.

FINDINGS OF FACT&CONCLUSIONS OF LAW

Having reviewed the evidentiary record compiled to date, the Board makes the following findings of fact and conclusions of law:

Claimant is a 16-year employee of the respondent. In 1993 he worked in an area with chemicals and a dusty environment. He developed breathing problems, was provided medical care and ultimately was moved to a work area where he was not exposed to chemicals or dust. After the move his breathing problems abated.

The claimant testified he had no prior history of breathing problems until the incident in 1993 and after he was moved to a different work area the problems stopped. In the intervening seven years claimant quit taking medicine and remained asymptomatic.

In 2000, claimant was moved back to the work area where he had originally developed breathing problems. Claimant testified that within a month of his return to that area he again developed breathing problems. Claimant sought treatment and was referred to Allen J. Parmet, M.D., for treatment.

Dr. Parmet diagnosed claimant with chronic allergic rhinitis, an inflammation of the nasal mucuous membranes. The doctor further noted claimant had turbinate hypertrophy, a nontumerous abnormally large curved bone that extends horizontally along the lateral wall of the nasal passage, with 70 percent obstruction of the right nasal airway and 80 percent obstruction of the left nasal airway. The doctor prescribed medication and nasal steroids for the rhinitis but concluded it was unlikely claimant would respond to topical medications alone and that long-term claimant would ultimately require surgery with a turbinate reduction procedure to allow him to breathe again.

In a progress note dated August 24, 2001, Dr. Parmet released claimant to work with the restriction to avoid exposure to dust and to wear a mask when working around potential irritants. The doctor further noted claimant should be referred to an ear, nose, and throat surgeon for turbinate reduction surgery. The doctor noted that, because there are no confirmatory tests, he could not establish work was causal to claimant's allergic rhinitis. However, he further noted that, because claimant's preexisting degree of obstruction is so severe, even small amounts of particulate dust could be sufficiently irritating to trigger compromise of claimant's already severely compromised upper nasal airway.

After Dr. Parmet released claimant to return to work, the respondent relocated claimant to a work area where he was not exposed to dust. Nonetheless, claimant testified he continues to have nasal problems.

Respondent contends claimant suffered a temporary aggravation of his underlying condition which resulted in the rhinitis or infection. However, respondent argues the underlying turbinate hypertrophy is a congenital defect which was neither caused nor aggravated by the incident which led to the rhinitis. Accordingly, respondent concludes the recommended turbinate reduction surgery is to correct a congenital condition unrelated to any work-related incident.

It is well settled in this State that an accidental injury is compensable even where the accident only serves to aggravate or accelerate an existing disease or intensifies the affliction.¹ "The test is not whether the job-related activity or injury caused the condition but whether the job-related activity or injury aggravated or accelerated the condition."²

The significant fact is claimant was asymptomatic for years irrespective of his underlying condition until he was returned to the work area that had initially caused him breathing problems. However, unlike the initial incident which had cleared up following removal of claimant from the work area, in this instance, it is claimant's uncontradicted testimony that he continues to have problems even though he was again removed from the offensive work environment.

Respondent argues this case is analagous and controlled by West-Mills v. Dillon Companies, Inc., 18 Kan. App. 2d 561, 859 P.2d 382 (1993). In that case it was determined the respondent was responsible for treatment for temporary aggravation of an underlying condition but was not liable for permanent disability due to the underlying condition. West-Mills is factually distinguishable from the instant case. In West-Mills claimant did not contend that her work place exposure to mold spores caused permanent aggravation of her underlying condition. Moreover, after leaving her employment her skin rash and blisters on her hands resolved.

In this case, claimant testified he was asymptomatic until the work-related exposure to the dusty work environment and after the exposure he continues to experience problems. Although the infection was controlled the claimant continues to complain of problems. Moreover, Dr. Parmet initially noted that, long-term, claimant would ultimately require turbinate reduction surgery to allow him to breathe again. The Board concludes the work-related exposure to the irritants in the work environment intensified and aggravated the underlying condition.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated October 2, 2001, is affirmed.

IT IS SO ORDERED.

¹Demars v. Rickel Manufacturing Corporation, 223 Kan. 374, 573 P.2d 1036 (1978); Chinn v. Gay & Taylor, Inc., 219 Kan. 196, 547 P.2d 751 (1976); Harris v. Cessna Aircraft Co., 9 Kan. App. 2d 334, 678 P.2d 178 (1984).

²Hanson v. Logan U.S.D. 326, 28 Kan. App. 2d 92, 11 P.3d 1184, *rev. denied* ____ Kan. ____ (2001).

Dated this _____ day of December 2001.

BOARD MEMBER

c: Steven R. Wilson, Attorney for Claimant
Kirby A. Vernon, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Workers Compensation Director